

B.2. Application Form for Consideration of a Plan or Project

The Delta Reform Act creates the Delta Stewardship Council (Council) as an independent agency of the state (Wat. Code §85200). SBX7 1 (effective February 3, 2010) gives the Council several responsibilities, many linked to a comprehensive “Delta Plan,” which the Council is charged to develop, adopt, and commence implementation of by January 1, 2012. The Council is also charged with developing an Interim Plan “...that includes recommendations for early actions, projects, and programs” (Wat. Code § 85084). The Council has set August 27, 2010, as the date for adoption of the Interim Plan. The Council uses the framework established in the Interim Plan to make recommendations based on its responsibilities under SBX7 1. After the Delta Plan is adopted, the Council decisions will become determinative.

1. Applicant Information

Request: Consideration as an early action: Recommend elimination of striped bass bag and size limits to Fish and Game Commission.

Consultation re plan: _____

Consultation re: possible covered action: _____

Other (please specify): _____

Applicant Name:

Coalition for a Sustainable Delta

Legal status (city, special district, firm, individual, etc.): non-profit organization

Address of applicant:

915 “L” Street, #C-438, Sacramento, CA 95814

Contact information: Name of responsible individual:

Michael Boccadoro

Role (officer, attorney, etc.): Spokesperson

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Legally Responsible Entity Name (if different than Applicant):

Legal status (city, special district, firm, individual, etc.): _____
Address of applicant: _____

Contact information: Name of responsible individual: _____

Role (officer, attorney, etc.): _____

Address: _____

Email: _____

Telephone: _____

Plan or project purpose narrative, including legal authority. If an action is “urgent,” provide the rationale for urgency.

Scientific evidence establishes that predation by non-native striped bass is contributing to the decline of native, at-risk species in the Sacramento and San Joaquin Rivers and the Delta. The California Fish and Game Commission (Commission) established a striped bass program in the 1980s that includes regulations imposing bag and size limits for striped bass to maintain an artificially high population of this non-native species. Under this early action, the Delta Stewardship Council (DSC) would request that the Commission eliminate its striped bass bag and size limits. Given the precarious status of the Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, delta smelt, and Central Valley steelhead, and the fact that any delay may result in irreversible losses of such fish, there is an urgent need for the DSC to adopt this action immediately. In a letter to the Commission dated May 13, 2010, the National Marine Fisheries Service (NMFS), which is tasked with administering the federal Endangered Species Act with respect to anadromous species including salmon and steelhead – recommended eliminating striped bass bag and size limits. This recommendation is consistent with the position taken by NMFS in its draft recovery plan for the salmon and steelhead that control of non-native predatory fish including striped bass is a critical action that must be taken to prevent extinction. In a September 2010 report to the Commission, the NMFS reaffirmed its assessment of striped bass predation: “In our review of the available scientific literature, NMFS has concluded that striped bass predation is a significant mortality factor for Central Valley salmon and steelhead, and action should be taken to minimize this stressor.” Expert scientists retained by the Coalition concur that striped bass predation is harmful to a number of native, at-risk species in the Delta and that elimination of the striped bass fishing regulations would lead to a decline in the striped bass population and a corresponding increase in the population of native, at-risk species.

Plan or project physical location and description (include geo-referencing latitude and longitude for projects):
Delta-wide

2. Plan or Project Review by Public Agencies

Local Government Discretionary Approval(s):

Yes ____ No X If yes, describe: _____

Delta Protection Commission Consistency Approval(s):

Yes ____ No X If yes, describe: _____

Bay Conservation and Development Commission Permit:

Yes ____ No X If yes, describe: _____

State Lands Commission:

Yes ____ No X

1 **CalTrans:**

2 Yes _____ No X

3 **State Water Resources Control Board Permit:**

4 Yes _____ No X

5 **Regional Water Quality Control Board:**

6 Yes _____ No X Regional Board Number: _____

7 **California Dept. of Toxic Substances Control:**

8 Yes _____ No X

9 **California Department of Fish and Game Streambed Alteration Permit:**

10 Yes _____ No X

11 **DF&G Take Authorization:**

12 Yes _____ No X

13 **Other DF&G Permit:**

14 Yes _____ No X

15 **U.S. Army Corps of Engineers:**

16 Yes _____ No X Public Notice Number: _____

17 **U.S. Fish and Wildlife Service: Take Authorization**

18 Yes _____ No X

19 **Biological Opinion:**

20 Yes _____ No _____

21 **NOAA Fisheries Service: Take Authorization**

22 Yes _____ No X

23 **Biological Opinion**

24 Yes _____ No _____

25 **U.S. Coast Guard:**

Yes _____ No X

Federal Funding:

Yes _____ No X

Describe any history of consideration by any other governmental agency and provide documentation of any actions taken.

NMFS requested that the Commission eliminate the bag and size limits for striped bass (see attached letter, dated May 13, 2010). The California Department of Fish and Game's own experts have estimated that striped bass may consume upwards of 25-50 percent of winter- and spring-run Chinook salmon. The Commission, at its April 7, 2010 meeting, declined to act but directed the Department of Fish and Game (DFG) to prepare a report regarding stressors on native species. The report, which was released in September 2010, includes an appendix drafted by the NMFS that states that striped bass predation is a significant mortality factor for salmon and steelhead and recommends taking action to address this stressor.

3. Environmental Impact Documentation (must be completed by all applicants)

a. Is the project statutorily or categorically exempt from the need to prepare any environmental documentation?

Yes X No _____

If "Yes," please attach a statement that identifies and supports this statutory or categorical exemption.

b. Has a government agency other than the Council, serving as the lead agency, adopted a negative declaration or certified an environmental impact report or environmental impact statement on the project?

Yes _____ No N/A

If "Yes," attach a copy of the document. If the environmental impact report or statement is longer than ten pages, also provide a summary of up to ten pages. If "No," provide sufficient information to allow the Council to make the necessary findings regarding all applicable policies. The certified document must be submitted prior to action on the application.

4. Assessment against Delta Reform Act Policy Objectives

Assess the proposed plan or project against the eight policy objectives listed below which "the legislature declares are inherent in the coequal goals for management of the Delta" (WC Section 85020).

Provide a brief summary for the rationale for each assessment and reference to any supporting documentation (include URL links as appropriate).

(a) Manage the Delta's water and environmental resources and the water resources of the state over the long term.

Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable _____

Rationale, magnitude of effect (if positive or negative) and documentation:

DFG's experts have estimated that striped bass may consume upwards of 25-50 percent of winter- and spring-run Chinook salmon. An expert scientist retained by the Coalition for a Sustainable Delta drew similar conclusions on the basis of modeling of the impacts of striped bass predation on those species. In addition, as indicated above, NMFS has determined that control of non-native predatory fish including striped bass is a critical action that must be taken to prevent extinction of steelhead and salmon and recommended elimination of the bag and size limits. Elimination of the Commission's bag and size limits for striped bass will reduce predation pressure by striped bass on native, imperiled fish species in the Delta and result in a corresponding increase in the population of those species.

(b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.

Positive ____ Negative ____ Neutral X Unknown ____ Not Applicable ____

Rationale, magnitude of effect (if positive or negative) and documentation:

Reduction in salmon predation will benefit commercial and recreational fishermen. Reduction in striped bass regulations will also allow more fishing for striped bass in the Delta, but will reduce the numbers of striped bass overall.

(c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.

Positive X Negative ____ Neutral ____ Unknown ____ Not Applicable ____

Rationale, magnitude of effect (if positive or negative) and documentation:

Elimination of the Commission's bag and size limits for striped bass will reduce the considerable predation pressure by striped bass on native, imperiled fish species in the Delta. This will contribute to restoring healthy populations of native fish to the Delta.

(d) Promote statewide water conservation, water use efficiency, and sustainable water use.

Positive ____ Negative ____ Neutral ____ Unknown X Not Applicable

Rationale, magnitude of effect (if positive or negative) and documentation:

(e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

Positive ____ Negative ____ Neutral ____ Unknown X Not Applicable

Rationale, magnitude of effect (if positive or negative) and documentation:

(f) Improve the water conveyance system and expand statewide water storage.

Positive ____ Negative ____ Neutral ____ Unknown X Not Applicable

Rationale, magnitude of effect (if positive or negative) and documentation:

(g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.

Positive ____ Negative ____ Neutral ____ Unknown X Not Applicable

Rationale, magnitude of effect (if positive or negative) and documentation:

(h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable _____

Rationale, magnitude of effect (if positive or negative) and documentation:

The elimination of bag and size limits for the non-native, predatory striped bass is supported both by science and the legal prohibition of "take" of endangered fish and wildlife without prior authorization in the federal Endangered Species Act. The Commission's ongoing failure to take action contradicts the Commission's authority to establish seasons, bag limits and methods of take for sport fish (Fish & G. Code, § 203), its responsibility to regulate the taking of endangered and threatened wildlife (Id. § 200), and the supporting science.

5. Assessment of Administration and Implementation Processes

Cost of Project/Plan: Please provide your best estimate of the total cost of the project or plan you are proposing. If this is a Plan, please provide an estimate of the annual operational or enforcement costs projected for the activity. Please list all sources used for developing the cost estimates

No cost

Financing (provide information on public and private sources of funding, including funds on hand or legally pledged or obligated and the sources of those funds):

N/A

Identify any public agencies (federal, state and local) whose actions or decisions are essential for the proposed action to succeed. Provide evidence of their approval and support of the proposed action:

Action by the Commission is required to eliminate the striped bass bag and size limits. NMFS requested that the Commission eliminate the bag and size limits for striped bass. DFG experts have estimated that striped bass may consume upwards of 25-50 percent of winter- and spring-run Chinook salmon. DFG enforces the bag and size regulations of the Commission. The Commission, at its April 7, 2010 meeting, declined to act.

If real property must be acquired or use altered for the success of the proposed action, identify the owners of that property and information on how ownership or use change will occur:

N/A

Provide a time line for the proposed plan or project, including major milestones through completion:

Make recommendation in November 2010 for consideration by the Commission by the end of the year.

Describe how success or failure of the plan or project will be determined, including measures proposed, time frame and public agency responsible for judging success:

Success for this early action is the elimination of bag and size limits for striped bass.

Describe the major benefits that can result from the proposed plan or project, including identification of beneficiaries and any information on the magnitude and timing of benefits received:

The primary beneficiaries of the action will be native, at-risk fish. Striped bass predation is a major cause of juvenile salmon mortality. It is also a cause of juvenile steelhead, delta smelt, and longfin smelt mortality. The populations of all of these fishes will benefit from elimination of the regulations.

If the proposed plan or project fails, what is done? What additional costs could be incurred and how will they be financed? Identify any lasting effects or changed options for future policy making:

Existing monitoring schema will allow biologists to monitor the relative abundance of the various species to assess the effects of the action, provided the Commission adopts the DSC recommendation. This will allow the DSC and the Commission to continually evaluate the efficacy of the action.

Insert for Section 3.a - Statement Regarding Application of the California Environmental Quality Act:

A recommendation from the DSC to the Fish and Game Commission is not a project for the purpose of CEQA because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (Cal. Pub. Resources Code, § 21065; CEQA Guidelines, § 15378(b)(5).) CEQA only applies to those government agency actions that have the potential for resulting in direct physical changes or reasonably foreseeable indirect changes in the environment.

Even if such a recommendation could be categorized as a “project” for purposes of CEQA, there are a number of applicable categorical exemptions, including actions undertaken by a regulatory agency to protect natural resources and the environment. (CEQA Guidelines, §§ 15307; 15308.)

Insert for Section 6 – Scientific Justification:

The best available scientific evidence establishes that striped bass predation is contributing to the decline of numerous native, at-risk species. NMFS (2010c) at 36 [“NMFS has concluded that striped bass predation is a significant mortality factor for Central Valley salmon and steelhead”]; NMFS (2009) at ES-2 [identifying “predation of Chinook salmon and steelhead from introduced species such as striped bass and black bass” as one of four major stressors on those species]; Hanson (2009a) at 15 [“predation by striped bass is a significant source of mortality to juvenile salmon during their downstream migration and that predation may counteract the success of programs to restore the salmon and steelhead population”]; Merz (2003) at 3. The potential for this impact, which was acknowledged by the National Marine Fisheries Service more than a decade ago (NMFS (1997) [“the best available commercial and scientific information indicates that predation on salmon by striped bass can be very high”]), has been confirmed by recent peer reviewed articles and independent predation analyses. Nobriga & Feyrer (2007) at 9 [“striped bass likely remains the most significant predator of Chinook salmon . . . and threatened Delta smelt”]; Lindley & Mohr (2003) at 328 [9% predation estimate on winter-run salmon based on population of 720,000]; Gingras (2010) at 498:13-21 [estimating predation on native salmonids is between 5%-25%]; Nobriga (2009) at 119:1-8 [estimating predation on native salmonids is between 6%-50%]; Hanson (2009a) at 4, 30-35 [estimating predation on native salmonids is between 20%-41%].

Moreover, it has been widely accepted that striped bass predation is a function of striped bass abundance (Lindley & Mohr (2003) at 328; CDFG (1998b) at 80-81; Gingras (2010) at 501:9-11; Hanson (2009a) at 40, Hanson (2009b) at 3, Bennett (2009) at 8, CDFG (1998a) at 111), and that the striped bass sport fishing regulations increase and/or maintain the striped bass population, thereby increasing predation on native species. USBR (1995) at 53; Bennett (2009) at 26; Cummins et al. (2008) at 47. It is because of this relationship that that National Marine Fisheries Service has recently repeatedly requested that the striped bass sport fishing regulations be eliminated. NMFS (2010b) at 1-2 [requesting elimination of striped bass size and bag limits “to reduce their predatory impact and thereby increase survival of native fish.”]; NMFS (2009) at 157 [“Implement programs and measure designed to control non-native predatory fish (e.g., striped bass . . .), including harvest management techniques”]; NMFS (2010a) at 3:22:20-3:26:44 [requesting that the Commission eliminate striped bass sport fishing regulations in the Delta].

Accordingly, consistent with the best available scientific evidence, we respectfully request the elimination of the striped bass sport fishing regulations.

References

- Bennett, D.H. 2009. Expert Report of Dr. David H. Bennett Per Rule 26(a)(2). *Coalition for a Sustainable Delta et al. v. McCamman et al.*, No. 1:08-CV-00397-OWW-GSA. October 2009. California Department of Fish and Game (CDFG). 1998a. Draft Conservation Plan for the California Department of Fish and Game Striped Bass Management Program, Prepared as Part of an Application for Incidental Take Permits Pursuant to Section 10(a)(1)(B) of the Endangered Species Act. May 1998.
- California Department of Fish and Game (CDFG). 1998b. Final Striped Bass Management Program Environmental Impact Report. June 1998.
- Cummins, K. et al. 2008. Listen to the River: An Independent Review of the CVPIA Fisheries Program. December 2008.
- Gingras, M. 2010. Deposition of Marty Gingras. *Coalition for a Sustainable Delta et al. v. McCamman et al.*, No. 1:08-CV-00397-OWW-GSA. January 14, 2010
- Hanson, C.H. 2009a. Expert Report of Dr. Charles H. Hanson Per Rule 26(a)(2). *Coalition for a*

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Hanson, C.H. 2009b. Rebuttal and Supplemental Expert Report of Dr. Charles H. Hanson Per Rule 26(a)(2). *Coalition for a Sustainable Delta et al. v. McCamman et al.*, No. 1:08-CV-00397-OWW-GSA. November 2009.

Lindley, S.T. and M.S. Mohr. 2003. Modeling the effect of striped bass (*Morone saxatilis*) on the population viability of Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*). Fish. Bull. 101:321-331.

Merz, J.E. 2003. Striped bass predation on juvenile salmonids at the Woodbridge Dam Afterbay, Mokelumne River, California. Unpublished draft document. East Bay Municipal Utility District. 4 pages plus 6 figures.

National Marine Fisheries Service (NMFS). 1997. Letter to CDFG re: Comments on Draft Conservation (CP) and Environmental Assessment (EA) prepared as part of an application for an Endangered Species Act (ESA) Section 10 Incidental Take Permit for the California Department of Fish and Game's (CDFG) Striped Bass Management Program. National Oceanic and Atmospheric Administration National Marine Fisheries Service Southwest Region. February 1997.

National Marine Fisheries Service (NMFS). 2009. Public Draft Recovery Plan for the evolutionary significant unites (ESU) of Sacramento River winter-run Chinook salmon and spring-run Chinook salmon and the distinct population segment of Central Valley steelhead. October 2009.

National Marine Fisheries Service (NMFS). 2010a. Presentation to California Fish and Game Commission re: Striped Bass Sport Fishing Regulations. March 3, 2010. Available at <http://www.cal-span.org/cgi-bin/archive.php?owner=CFG&date=2010-03-03>.

National Marine Fisheries Service (NMFS). 2010b. Letter to California Fish and Game Commission re: Striped Bass Sport Fishing Regulations. National Oceanic and Atmospheric Administration National Marine Fisheries Service Southwest Region. May 2010.

National Marine Fisheries Service (NMFS). 2010c. A Report to the California Fish and Game Commission on Stressors Impacting Delta Related Organisms: Appendix A. National Marine Fisheries Service Description of Predation as a Stressor to Chinook Salmon and Steelhead in the Central Valley. September 2010.

Nobriga, M.L., and F. Feyrer. 2007. Shallow-water piscivore-prey dynamics in the Sacramento-San Joaquin Delta. San Francisco Estuary and Watershed Science.

Nobriga, M.L. 2009. Deposition of Matthew L. Nobriga. *Coalition for a Sustainable Delta et al. v. McCamman et al.*, No. 1:08-CV-00397-OWW-GSA. December 16, 2009.

United States Bureau of Reclamation (USBR). 1995. Biological Assessment for the California Department of Fish and Game Striped bass Management Program June, 1995 – June, 1996. March 1995.